DOCKET NO. CV-22-6123280-S	:	STATE OF CONNECTICUT
KHADIJAH ABUBAKARI AND ANAS ABUBAKARI	:	SUPERIOR COURT
	:	JUDICIAL DISTRICT OF NEW HAVEN
V.	:	AT NEW HAVEN
ELIZABETH SCHENKER	:	APRIL 10, 2023

MEMORANDUM OF DECISION
MOTION TO STRIKE (#103)

STATEMENT OF CASE AND PROCEDURAL HISTORY

The plaintiffs, Khadijah Abubakari and Anas Abubakari, in this one count complaint filed on May 10, 2022, allege the following facts against the defendant Elizabeth Schenker.[1] The plaintiffs are residents of Hamden, Connecticut. The defendant was at all times mentioned herein a social worker employed by the Hamden Board of Education and acting in her capacity as such. She is sued only in her individual capacity.

The plaintiffs allege the following. During the 2016-2017 school year, the plaintiffs' minor

[1]The court acknowledges that it has jurisdiction over the plaintiffs Khadijah Abubakari and Anas Abubakari. This action is being brought by these two plaintiffs on behalf of themselves, despite stating in the complaint that the action is being brought on behalf of their minor child as well. They did not list the child on the summons, and any reference to the child as a plaintiff throughout the complaint is frequently contradicted. "[The defendant] further knew, and intended, that both parents and U.A. would suffer severe emotional distress as a result of her actions and that the plaintiffs would be forced to incur substantial expenses to obtain counsel and attempt to save themselves and their child from her vicious attack." Compl. ¶ 14. Although the plaintiffs state in the complaint that the present action is being brought by them on behalf of the minor child, they have not listed on the summons either of themselves as ppa for the minor child. See *Hill* v. *Jabour*, Superior Court, judicial district of New Haven, Docket No. CV096006300S. (April 27, 2010, *Wilson, J.*) (court allowed substitution of "Juliann Hill, PPA Lillian Hill" for "Lillian Hill, PPA Juliann Hill" where incorrect party, was named by mistake). The plaintiffs here have not at all listed the minor child as a party on the summons. Therefore, the court's subject matter jurisdiction is seriously implicated in regard to any claim alleged by the minor child.

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child U.A. was enrolled at a Hamden elementary school. At a meeting of the school's pupil planning team (PPT), U.A. was identified as a student requiring special education under federal law, and an individual education plan (IEP) was put in place for the child. The PPT also had determined that U.A. would be provided special education, services, and accommodations, including a one-to-one paraprofessional to assist the child with his learning disabilities so that he would be able to transition into the Hamden Middle School and continue to succeed.

For the 2017-2018 school year, U.A. was enrolled at Hamden Middle School and during a PPT meeting in December 2017, the school officials changed his IEP, among other things, to eliminate the one-to-one paraprofessional. Because of the changes to U.A.'s IEP, the child's educational progress regressed, but the school officials continued to socially advance him through his grade. As a result of the regression, the plaintiffs requested reinstatement of the one-to-one paraprofessional and other special services and accommodations in order to reverse the regression. The plaintiffs' requests were denied.

The plaintiffs allege the following additional facts. At a PPT meeting on February 13, 2018, the plaintiff Khadijah Abubakari expressly announced that she would pull U.A. out of his enrollment in the Hamden public schools and continue to keep him out until the school district provided him with the special education services and accommodations she believed necessary to allow him to progress successfully. She further announced explicitly and on the record that beginning immediately she would be home-schooling U.A., with the assistance of professional tutoring services the plaintiffs would hire at their own expense, as is specifically provided for and permitted by General Statutes § 10-184.

Despite actual knowledge of the plaintiffs' home-schooling of U.A. in compliance with applicable law, on March 22, 2018, the defendant knowingly and maliciously filed a false complaint with the Connecticut Department of Children and Families (DCF) claiming that the plaintiffs were educationally neglecting U.A. because he "ha[d] not been in school since February 13, 2018" and that a "[p]arent ha[d] not engaged in communication with school" and a "[p]arent ha[d] been difficult to work with at IEP mtgs. Last meeting was February 13th." Compl. ¶ 13.

Additionally, the following facts are alleged. The defendant knew, and intended, that the result of her malicious actions would be that DCF would initiate child neglect proceedings against the plaintiffs, would require them to appear in court, and would attempt to remove U.A. from their custody and place him in foster care. The defendant further knew, and intended, that both parents and U.A. would suffer severe emotional distress as a result of her actions and that the plaintiffs would be forced to incur substantial expenses to obtain counsel and attempt to save themselves and their child from the defendant's attack.

As a proximate result of the defendant's actions, in 2018 DCF launched an investigation of the plaintiffs and ultimately filed a petition for neglect against them in the Superior Court. As a further result of the defendant's actions, which were extreme and outrageous, the plaintiffs were subjected to a child neglect prosecution in the Superior Court; were required to hire an attorney at substantial expense; were required to appear in court to defend themselves; and suffered great and prolonged fear, anguish, sleeplessness, loss of appetite, and other aspects of severe emotional distress. On October 17, 2018, DCF withdrew their petition for neglect.

The plaintiffs seek judgment for compensatory and punitive damages for causing intentional

infliction of emotional distress (IIED).

On September 6, 2022, the defendant filed a motion to strike the one count complaint in its entirety on the following three grounds: 1) the plaintiffs' complaint fails to sufficiently state a claim for intentional infliction of emotional distress, 2) the defendant is immune from civil liability for reasonable actions taken as a mandated reporter pursuant to General Statutes § 17a-101e (b), and 3) the defendant's actions are protected by the first amendment and the *Noerr-Pennington* doctrine. The motion is accompanied by a memorandum of law in support. The plaintiffs filed a memorandum of law in opposition to the motion to strike on September 12, 2022. The defendant further filed a reply memorandum in support of her motion to strike on October 3, 2022. A remote hearing was held on the motion on December 12, 2022.

DISCUSSION

"The role of the trial court in ruling on a motion to strike is to examine the [complaint], construed in favor of the [plaintiff], to determine whether the [pleading party has] stated a legally sufficient cause of action." (Internal quotation marks omitted.) *Coe* v. *Board of Education*, 301 Conn. 112, 117, 19 A.3d 640 (2011). "In ruling on a motion to strike, the court is limited to the facts alleged in the complaint." (Internal quotation marks omitted.). *Faulkner* v. *United Technologies Corp.*, 240 Conn. 576, 580, 693 A.2d 293 (1997). "[The court] construe[s] the complaint in the manner most favorable to sustaining its legal sufficiency. . . . Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . . Moreover, [the court notes] that [w]hat is necessarily implied [in an allegation] need not be expressly alleged. . . . It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's

motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted." (Internal quotation marks omitted.) *Geysen* v. *Securitas Security Services USA, Inc.*, 322 Conn. 385, 398, 142 A.3d 227 (2016). "The modern trend, which is followed in Connecticut, is to construe pleadings broadly and realistically, rather than narrowly and technically. . . . Although essential allegations may not be supplied by conjecture or remote implication . . . the complaint must be read in its entirety in such a way as to give effect to the pleading with reference to the general theory upon which it proceeded . . . . As long as the pleadings provide sufficient notice of the facts claimed and the issues to be tried and do not surprise or prejudice the opposing party, we will not conclude that the complaint is insufficient . . . ." (Internal quotation marks omitted.) *J.D.C. Enterprises, Inc.* v. *Sarjac Partners, LLC*, 164 Conn. App. 508, 512-13, 137 A.3d 894, cert. denied, 321 Conn. 913, 136 A.3d 1274 (2016).

The defendant argues that the one count complaint is legally insufficient to state a claim of IIED because the plaintiffs have failed to demonstrate that the defendant was acting with "malicious intent" and that the plaintiffs have failed to allege all of the IIED required elements, particularly that the defendant's conduct be "extreme and outrageous." The defendant further argues that she is immune from civil liability pursuant to § 17a-101e (b) because she made a good faith report of child abuse pursuant to the statute and is, therefore, immune from liability. Finally, the defendant argues that the her actions are protected by the first amendment and the *Noerr-Pennington* doctrine, whereby speech and other efforts to influence governmental activity cannot be the basis of legal penalties. Essentially, the first amendment provides the right to petition and protects the right to complain to public officials and seek administrative and judicial relief, and the *Noerr-Pennington* doctrine protects the defendant's right to petition to DCF.

In their memorandum of law in opposition, the plaintiffs counter that the allegations in their complaint set forth conduct that fulfills the elements of IIED, that malice can be inferred from the absence of probable cause to accuse the plaintiffs of child neglect, and that the behavior of the defendant was sufficiently "extreme and outrageous." Further, the defendant's actions as a mandated reporter were not based on "reasonable cause" and such a determination is an issue to be resolved by a trier of fact. Finally, free speech does not protect those who file false complaints against innocent citizens, the *Noerr-Pennington* doctrine does not protect conduct that amounts to a "sham," and such issues cannot be decided on a motion to strike.

A. Failure to State a Claim for Intentional Infliction of Emotional Distress

"In order for the plaintiff to prevail in a case for liability under . . . [intentional infliction of emotional distress], four elements must be established. It must be shown: (1) that the actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe." (Internal quotation marks omitted.) *Appleton* v. *Board of Education*, 254 Conn. 205, 210, 757 A.2d 1059 (2000).

Connecticut courts have established a high threshold for successfully alleging a claim of IIED. See *Gillians* v. *Vivanco-Small*, 128 Conn. App. 207, 211, 15 A.3d 1200, cert. denied, 301 Conn. 933, 23 A.3d 726 (2011). "Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case

is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, Outrageous!" (Internal quotation marks omitted.) *Tracy* v. *New Milford Public Schools*, 101 Conn. App. 560, 569-70, 922 A.2d 280, cert. denied, 284 Conn. 910, 931 A.2d 935 (2007). "Whether a defendant's conduct is sufficient to satisfy the requirement that it be extreme and outrageous is initially a question for the court to determine." *Appleton* v. *Board of Education*, supra, 254 Conn. 210; see also *Ortiz* v. *Torres-Rodriguez*, 205 Conn. App. 129, 141, 255 A.3d 941, cert. denied, 337 Conn. 910, 253 A.3d 43 (2021). In the event that "reasonable minds" could disagree on that issue, however, the matter must be determined by the trier of fact. See *Hartmann* v. *Gulf View Estates Homeowners Assn., Inc.*, 88 Conn. App. 290, 295, 869 A.2d 275 (2005).

When examining this framework in the context of alleged false reporting to DCF, the court finds the behavior of the defendant to be sufficiently extreme and outrageous for the purposes of withstanding a motion to strike. The court finds *Greco* v. *Anderson*, Superior Court, judicial district of Hartford, Docket No. CV-00-0501458-S (October 23, 2000, *Shortall, J.*) to be both factually analogous and persuasive. In *Greco*, the plaintiffs were parents of two minor children, who alleged in part that one of the defendants, a mandated reporter, "falsely and maliciously informed DCF that she had personally observed conditions which caused her to believe that the [plaintiffs] were physically abusing their children." (Internal quotation marks omitted.) Id. The plaintiffs alleged that their children were removed from their home for an extended period of time and the plaintiffs were subsequently arrested and prosecuted for crimes charged as a result of the alleged abuse. The charges were ultimately dismissed. The plaintiffs brought multiple claims against three defendants, including allegations of IIED. The court denied the defendant's motion to strike the count alleging

IIED, reasoning that, "I would be prepared to find that false and malicious allegations which lead to the loss of one's children and threaten[ed] the loss of one's liberty are, per se, extreme and outrageous." (Internal quotations marks omitted.) Id. Since "[r]easonable minds can differ on whether the conduct of the defendants was extreme and outrageous to the degree that it would support a claim for the infliction of emotional distress . . . the issue is for the jury." (Citation omitted; internal quotation marks omitted.)

The court finds the factual circumstances of the present case analogous to that of *Greco*, and because a motion to strike requires the court to admit all well-pleaded facts, the court concludes that the allegations of the defendant making a report to DCF, with actual knowledge that the plaintiffs were in compliance with their statutory obligation to educate their child, which report triggered an investigation and subsequent prosecution of the plaintiffs by DCF, are sufficiently extreme and outrageous for purposes of alleging a claim of IIED.[2] Moreover, as reasonable minds could disagree as to whether the conduct of the defendant was extreme and outrageous to support a claim for IIED, the issue is one for the jury. See *Greco* v. *Anderson*, supra, Superior Court, Docket No. CV-00-0501458-S. Therefore, the defendant's motion to strike on the ground that the plaintiffs failed to sufficiently state a claim of IIED is denied.

B. Immunity for Mandated Reporters

The defendant argues that the motion to strike should be granted becaause she is immune

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[2]In the complaint, the plaintiffs briefly reference "malice" but do not thoroughly address the issue, neither does the defendant in her motion to strike. Malice is not an element of IIED. See *Appleton* v. *Board of Education*, 254 Conn. 205, 210, 757 A.2d 1059 (2000). As the parties did not address the issue in their briefs, the court will not address the issue on the parties' behalf.

form civil liability for reasonable actions she took as a mandated reporter pursuant to General Statutes § 17a-101 (b).

"Statutory immunity may be raised through a motion to strike where it is apparent from the face of the complaint that the defendant was acting as a mandated reporter when the alleged negligent acts or omissions occurred." *Doe* v. *Firn*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-06-500087-S (June 12, 2007, *Esposito, J.*). Social workers are mandated reporters in the state of Connecticut. See General Statutes § 17a-101 (b). General Statutes § 17a-101e (b) provides in relevant part: "Any person [who] in good faith . . . makes a report pursuant to sections 17a-101a to 17a-101d, inclusive, and 17a-103 . . . shall be immune from any liability, civil or criminal, which might otherwise arise from or be related to the actions taken pursuant to this subsection and shall have the same immunity with respect to any judicial proceeding which results from such report or actions, provided such person did not perpetrate or cause such abuse or neglect." "[Good faith] is a subjective standard of honesty of fact in the conduct or transaction concerned, taking into account the person's state of mind, actual knowledge and motives. . . . Whether good faith exists is a question of fact to be determined from all circumstances." (Internal quotation marks omitted.) *Jaser* v. *Fischer*, 65 Conn. App. 349, 359-60, 783 A.2d 28 (2001). "Construing § 17a-101a, which requires reasonable cause to suspect or believe that the child abuse took place and imposes penalties on the mandatory reporters who fail to report child abuse in conjunction with § 17a-101e (b), which requires the report to be made in good faith for the statutory immunity to apply, it can be inferred that if the reporter, when making a report, had a reasonable cause to believe that the child has been abused, the report has been made in good faith." (Internal quotation marks omitted.) *Parisi* v. *Johnsky*, Superior Court, judicial district of New Haven, Docket No. CV-05-

4009374-S (February 20, 2007, *Cosgrove, J.*).

Whether a mandated reporter has knowledge of the falsity of what they are reporting to DCF can influence a determination of whether a report was made in good faith. See *Giannettino* v. *Scarpetti*, Superior Court, judicial district of New Haven, Docket No. CV-09-5030562-S (July 14, 2011, *Woods, J.*) (denying motion for summary judgment in part due to fact that plaintiffs had submitted no evidence that mandated reporters knew that child was lying about sexual abuse allegations when they made report to DCF or had any reason to file false report); see also *Riedl* v. *Plourde*, Superior Court, judicial district of Litchfield, Docket No. CV-02-0088965-S (February 10, 2003, *Pickard, J.*) (denying motion to strike in part because "the court must assume the truth of the allegations of the complaint that the reports [to DCF and the police] were false and that the defendants knew or should have known that they were false. This negates the possibility that the reports were made in good faith."); but see *Eaddy* v. *Dept. of Children & Families*, Superior Court, judicial district of Hartford, Docket No. CV-10-6013363-S (December 5, 2012, *Miller, J.*) (granting defendant's motion to strike counts of vexatious suit and IIED in part because plaintiff did not have "some improper or unjustifiable motive which led them to make a false report to DCF" and had "at most, alleged that the school defendants made a wrong decision to report her son's situation to DCF" [internal quotation marks omitted]).

As it can be reasonably inferred from the face of the complaint that the defendant was acting as a mandated reporter when the alleged unlawful conduct occurred, a motion to strike is an appropriate means of raising the defense of qualified immunity. See *Doe* v. *Firn*, supra, Superior Court, Docket No CV-06-500087-S. The plaintiffs allege in their complaint that the defendant had

actual knowledge of their decision to remove U.A. from school and to begin home-schooling the child and despite such knowledge that U.A. was being home-schooled in compliance with § 10-184, the defendant chose to make a report to DCF that the plaintiffs were educationally neglecting U.A. Because the plaintiffs' allegations allege that the defendant knew or should have known that such an allegation of educational neglect was false, this then suggests that the report was not made in good faith and, therefore, the qualified immunity protection for mandated reporters may not apply. See *Giannettino* v. *Scarpetti*, supra, Superior Court, Docket No. CV-09-5030562-S; see also *Riedl* v. *Plourde*, supra, Superior Court, Docket No. CV-02-0088965-S. The defendant's motion to strike on the ground of qualified immunity for mandated reporters is therefore denied.

C. First Amendment and *Noerr-Pennington* Doctrine Protections

i. First Amendment

"The right to freedom of speech under the First Amendment is not absolute." *Nowacki* v. *Town of New Canaan*, United States District Court, Docket No. 3:12CV01296 (JCH) (D. Conn. March 1, 2013). "The freedom to petition is cut from the same cloth as the other guarantees of the First Amendment." (Internal quotation marks omitted.) Id. Other than simply referencing the first amendment protection to petition the government, it is unclear from the defendant's motion to what extent the first amendment argument is separate from her *Noerr-Pennington* argument; and how asserting that an individual's first amendment right to petition the government prohibits the validity of this IIED claim. Without adequately briefing the issues or providing relevant case law or reasoning as to how the first amendment applies to bar this count, the court cannot consider this ground for the purposes of a motion to strike. "In ruling on a motion to strike the trial court is

limited to considering the grounds specified in the motion." *Meredith* v. *Police Commission*, 182 Conn. 138, 140, 438 A.2d 27 (1980); see *Hlinka* v. *Michaels*, 204 Conn. App. 537, 546, 254 A.3d 361 (2021) ("[b]ecause the defendant was not provided with reasonable notice that her special defense of laches could be struck, we conclude that the court acted improperly when it, sua sponte, struck that defense"). "Where a claim is asserted . . . but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned." (Internal quotation marks omitted.) *Traylor* v. *State*, 332 Conn. 789, 805, 213 A.3d 467 (2019); see *Willow Springs Condominium Assn., Inc.* v. *Seventh BRT Development Corp.*, 245 Conn. 1, 38, 717 A.2d 77 (1998) (issues that are not adequately briefed are deemed abandoned). Accordingly, the defendant's motion to strike on this ground is denied.

ii. *Noerr-Pennington* Doctrine

"The *Noerr-Pennington* doctrine has evolved from its antitrust origins to apply to a myriad of situations in which it shields individuals from liability for petitioning a governmental entity for redress. [A]lthough the *Noerr-Pennington* defense is most often asserted against antitrust claims, it is equally applicable to many types of claims which [seek] to assign liability on the basis of the defendant's exercise of its first amendment rights. For example, *Noerr-Pennington* has been recognized as a defense to actions brought under the National Labor Relations Act . . . state law claims of tortious interference with business relations . . . federal securities laws . . . and wrongful discharge claims." (Citations omitted; internal quotation marks omitted.) *Zeller* v. *Consolini*, 59 Conn App. 545, 551-52, 758 A.2d 376 (2000). "Broadly speaking, *Noerr-Pennington* immunizes activity undertaken by persons who use the official channels of governmental agencies and courts

to advocate their cause, even if that cause consists of nothing more than seeking an outcome adverse to a business competitor and/or favorable to a petitioner's own economic interests." (Internal quotation marks omitted.) *Procurement, LLC* v. *Ahuja*, 197 Conn. App. 696, 703, 234 A.3d 135 (2020). "Although the *Noerr-Pennington* doctrine provides broad coverage to petitioning individuals or groups, its protection is not limitless. . . . [P]etitioning activity is not protected if such activity is a mere sham or pretense to interfere with no reasonable expectation of obtaining a favorable ruling." *Zeller* v. *Consolini*, supra.

The defendant asserts that the *Noerr-Pennington* doctrine protects the defendant's right to petition DCF. The defendant further asserts that the plaintiffs have not sufficiently alleged that the report by the defendant as a mandated reporter was a sham and that, therefore, the defendant was protected from this claim under the *Noerr-Pennington* doctrine and the first amendment to complain to DCF. In support of this assertion, the defendant cites to, amongst other cases, *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127, 81 S. Ct. 523, 5 L. Ed. 2d 464 (1961) and *United Mine Workers* v. *Pennington*, 381 U.S. 657, 85 S. Ct. 1585, 14 L. Ed. 2d 626 (1965), which developed the *Noerr-Pennington* doctrine that was eventually adopted by Connecticut courts. See *Zeller* v. *Consolini,* supra, 59 Conn. App. 554. Although the referenced cases provide the general framework for the *Noerr-Pennington* doctrine, the defendant does not point to, nor did the court's research reveal, any cases which demonstrate the applicability of the *Noerr-Pennington* doctrine to the context of a mandated reporter such as in the present action. As stated with the first amendment issue raised by the defendant, without adequately briefing the issues or providing relevant case law or reasoning as to how this doctrine applies to strike this count, the court cannot consider this ground for purposes of a motion to strike. "In ruling on a motion to strike the trial court is limited

to considering the grounds specified in the motion." *Meredith* v. *Police Commission*, 182 Conn. 138, 140, 438 A.2d 27 (1980); see *Hlinka* v. *Michaels*, 204 Conn. App. 537, 546, 254 A.3d 361 (2021) ("[b]ecause the defendant was not provided with reasonable notice that her special defense of laches could be struck, we conclude that the court acted improperly when it, sua sponte, struck that defense"). "Where a claim is asserted . . . but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned." (Internal quotation marks omitted.) *Traylor* v. *State*, 332 Conn. 789, 805, 213 A.3d 467 (2019); see *Willow Springs Condominium Assn., Inc.* v. *Seventh BRT Development Corp.*, 245 Conn. 1, 38, 717 A.2d 77 (1998) (issues that are not adequately briefed are deemed abandoned). The defendant's motion to strike on this ground is therefore denied.

CONCLUSION

For the foregoing reasons, the defendant's motion to strike is denied.

Juris No. 421279
Wilson, J.

Judgment entered_____ 20____
Counsel/self-rep. Ind. notified 4/10 20 23
By ☐ JENO ☒ copy of memo ☐ Other
☒ Copy to Reporter of Judicial Decisions
Mailed to: John R. Williams
and
Howd & Ludorf, LLC
By: Dylan Wingard
Assistant clerk